

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF CORIX UTILITIES)
(ILLINOIS) LLC; HYDRO STAR, LLC; UTILITIES,)
INC.; AND WATER SERVICE CORPORATION OF) CASE NO. 2012-00133
KENTUCKY FOR THE TRANSFER AND)
ACQUISITION OF CONTROL PURSUANT TO KRS)
278.020)

ORDER

Corix Utilities (Illinois) LLC (“Corix Utilities”); Hydro Star, LLC (“Hydro Star”); Utilities, Inc.; and Water Service Corporation of Kentucky (“Water Service Corporation”) (collectively “Joint Applicants”) have applied for Commission approval of the indirect transfer of control of Water Service Corporation to Corix Utilities from Highstar Capital Fund II, L.P. and certain of its affiliates and co-investors.¹

Having considered the Application and the evidence of record, the Commission finds that:

1. Water Service Corporation, a Kentucky corporation organized under KRS Chapter 271B, owns and operates facilities used in the treatment, storage,

¹ Joint Applicants filed their application with the Commission on April 16, 2012. The Attorney General (“AG”) is the only party who has been granted leave to intervene in this proceeding. Following our receipt of the Application, the Commission established a procedural schedule that provided for discovery and a hearing. At the Joint Applicants’ request, Commission Staff convened an informal conference in this matter on July 12, 2012. On July 27, 2012, the Joint Applicants and the AG advised the Commission in writing of certain conditions that they agreed were necessary to render the proposed transfer of control in the public interest. On August 2, 2012, the Commission conducted a hearing in this matter. The only persons present were counsel for the parties. The record indicates that no public comments regarding the proposed transfer have been received.

transmission, and distribution of water to approximately 7,388 customers in Middlesboro and Clinton, Kentucky.²

2. As of December 31, 2011, Water Service Corporation reported net utility plant of \$5,656,367.³

4. As of December 31, 2011, Water Service Corporation reported "Total Assets and Other Debits" of \$6,326,664.⁴

5. As of December 31, 2011, Water Service Corporation's only major liability was an account payable of \$1,667,632 that is owed to Utilities, Inc. Water Service has no long-term indebtedness.⁵

6. Utilities, Inc., a corporation organized under the laws of Illinois, is one of the largest privately owned water utilities in the United States and provides water and wastewater service to more than 290,000 residential customers in 15 states.⁶

7. Utilities, Inc. owns all issued and outstanding capital stock of Water Service Corporation.

8. Hydro Star Holdings Corporation, a corporation organized under the laws of Delaware, owns all of Utilities, Inc.'s issued and outstanding shares.⁷

² *Annual Report of Water Service Corporation of Kentucky to the Public Service Commission of Kentucky for the Year Ended December 31, 2011* at 5, 30; Application at ¶¶ 6.

³ *Annual Report* at 7.

⁴ *Id.* at 7.

⁵ *Id.* at 9.

⁶ App. ¶¶ 8.

⁷ App. ¶¶ 10.

9. Hydro Star, a Delaware limited liability company, owns all of the issued and outstanding shares of Hydro Star Holdings Corporation.⁸

10. The following entities hold the following interests in Hydro Star: Highstar Capital II Prism Fund, L.P. (29.87 percent); Highstar Capital Fund II, L.P. (43.87 percent); Hydro Star Interco L.L.C (8.4 percent); and American General Life Insurance Company (17.86 percent) (collectively "Highstar").⁹

11. Corix Utilities is a Delaware limited liability company that is engaged in the ownership or operation of water, wastewater, and electric utilities and the manufacture, distribution, and sale of utility-related products and services.¹⁰

12. Corix Infrastructure Inc. ("Corix Infrastructure"), a Canadian corporation, holds through intermediate subsidiaries all outstanding membership interests of Corix Utilities. Corix Infrastructure, together with its subsidiaries, is known as "the Corix Group."

13. British Columbia Investment Management Corporation ("bcIMC") and CAI Capital Management, Inc., own approximately 84 percent of Corix Infrastructure's outstanding interest.

14. bcIMC is an independent investment management corporation that manages a globally diversified investment portfolio of \$92.1 billion as of March 31, 2012 and is a long-term institutional investor in several leading utilities.¹¹ CAI Capital

⁸ *Id.*

⁹ App. Ex. 4.

¹⁰ *Id.*

¹¹ See <http://www.bcimc.com> (last visited Aug. 9, 2012).

Management is a private equity firm that has invested or placed with co-investors over \$1.3 billion in equity or equity-related investments in North America.¹²

15. The Corix Group collectively manages over \$750 million in assets, employs over 2,200 employees in North America and generates cumulative revenue of approximately \$540 million.¹³

16. The Corix Group consists of three business segments:

a. The utilities division designs, builds, owns and operates utility facilities. It owns or manages several water and wastewater system operations, including those serving the city of Fairbanks, Alaska, the city of Langford, British Columbia, several U.S. military installations, and the University of Oklahoma. These operations provide water and wastewater service to over 350,000 persons.¹⁴ The operations are primarily conducted through Corix Utilities, Corix Multi-Utility Services Inc., Corix Utilities (Oklahoma) Inc., Fairbanks Sewer and Water, Inc., Doyon Utilities LLC and Corix Water Systems, Inc.

b. The utility services division provides measurement and metering services and other specialized utility field services for municipalities, utilities, and cooperatives throughout North America. The operations are primarily conducted through Corix Utilities (US) Inc.¹⁵

c. The utility products division distributes pipes, valves, meters, pumps, irrigation equipment, service and repair products that are used to transport

¹² See <http://www.caifunds.com/aboutcai.html> (last visited Aug. 9, 2012).

¹³ Joint Applicants' Response to Commission Staff's First Request for Information, Item 3.

¹⁴ App. Ex. 2 at 6-7.

¹⁵ *Id.*

water and wastewater.¹⁶ The operations are conducted primarily through Corix Water Products Limited Partnership, Corix Water Products (East) Inc., Corix Water Products (US), Inc., and Corix Control Solutions, Inc.

17. On February 17, 2012, Corix Utilities and Highstar executed a Purchase and Sale Agreement under which Corix Utilities will acquire 100 percent of the issued and outstanding membership interest of Hydro Star.¹⁷

18. Corix Utilities has no current plans to change either Utilities, Inc.'s or Water Service Corporation's current senior management or officers. If the proposed transaction occurs, the current management of Utilities, Inc. and Water Service Corporation will remain in place to operate and manage Water Service Corporation's operations. No reduction in the current level of service is likely to result from the proposed transaction.

19. Corix Utilities does not anticipate any change to the capital structure of Utilities, Inc. or Water Service Corporation upon completion of the proposed transaction.¹⁸

20. Corix Infrastructure is considering the possible merger of Corix Utilities and Hydro Star after the consummation of the proposed transaction to eliminate one of the intermediate holding companies through which Corix Utilities will hold its interests in Utilities, Inc. and Water Service Corporation.¹⁹

¹⁶ *Id.*

¹⁷ App. Ex. 3.

¹⁸ Joint Applicants' Response to Commission Staff's First Request for Information, Item 5, 24(c).

¹⁹ App. ¶ 17.

21. As part of the Corix Group, Water Service Corporation will have access to a wide spectrum of technical and industry expertise in all facets of sustainable water, wastewater, and energy systems, including innovative technologies, operating tools and regulatory resources required to develop sustainable multi-utility services.

22. Upon completion of the transaction, Utilities, Inc. and Water Service Corporation will have greater access to capital on favorable financing terms and will be in a better position to fund capital improvement projects.

23. The proposed transaction will not result in any change in Water Service Corporation's current rates.

24. The proposed transaction requires the approval of 11 state regulatory commissions²⁰ and certain federal agencies.²¹ As of the date of this Order, three state regulatory commissions²² have approved the proposed transaction.

Having reviewed the evidence of record, the Commission makes the following conclusions of law:

1. Water Service Corporation is a utility that is subject to Commission jurisdiction.²³

²⁰ These are Florida, Illinois, Kentucky, Louisiana, Maryland, Nevada, New Jersey, North Carolina, Pennsylvania, Tennessee, and Virginia.

²¹ The approval of the Committee on Foreign Investment in the United States, an inter-agency committee authorized to review transactions that could result in control of a U.S. business by a foreign person to determine the effect of such transactions on U.S. national security, is also required.

²² *Utilities, Inc. of Louisiana and Louisiana Water Service, Inc.*, Docket No. S-32297 (La. PSC July 5, 2012); *Petition for Authority to Transfer Control of Utilities, Inc. to Corix Utilities (Illinois) LLC*, Docket No. 12-00033 (Tn. Reg. Auth. June 21, 2012); Letter from David J. Collins, Executive Secretary, Maryland Pub. Serv. Comm'n, to Brian M. Quinn, Esq. (June 6, 2012) (advising of approval of transaction).

²³ KRS 278.010(3)(d).

2. Corix Utilities is a “person” for purposes of KRS Chapter 278.²⁴

3. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.”

4. By its acquisition of 100 percent of the membership interest in Hydro Star, Corix Utilities will acquire ownership and control of Water Service Corporation.

5. As Corix Utilities is a “person” and is acquiring control of Water Service Corporation through its purchase of all membership interest of Hydro Star, KRS 278.020(5) is applicable to and requires Commission approval of the proposed transfer.

6. KRS 278.020(6) provides that “[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an “acquirer”), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.”

7. As Corix Utilities is a “person” and is acquiring control of Water Service Corporation through Corix Utilities’ acquisition of all membership interest of Hydro Star, KRS 278.020(6) is applicable to and requires Commission approval of the proposed transfer.

8. Corix Utilities has the financial, technical, and managerial abilities to provide reasonable service to Water Service Corporation’s present customers.

9. Corix Utilities’ proposed acquisition of Hydro Star and the proposed transfer of control of Water Service Corporation to Corix Utilities are in accordance with law and for a proper purpose.

²⁴ KRS 278.010(2).

10. Provided that the proposed acquisition and transfer are conditioned upon the terms set forth in ordering paragraphs 2 through 27 of this Order, the proposed acquisition and transfer are consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in ordering paragraphs 2 through 27 of this Order, the transfer of control of Water Service Corporation from Hydro Star to Corix Utilities and Corix Infrastructure through Corix Utilities' acquisition of ownership and control of Hydro Star is approved.

2. The chief executive officer of Corix Infrastructure, Corix Utilities, Utilities, Inc., and Water Service Corporation shall each file with the Commission, within seven days of the date of this Order, a written acknowledgement on behalf of his/her entity that the entity accepts and agrees to be bound by the commitments set forth in the Appendix to this Order.

3. The Joint Applicants shall file with the Commission a copy of the final decision or order or other forms of regulatory notification regarding the proposed transaction issued by each state regulatory authority with jurisdiction over the proposed transaction within 14 days of the issuance of such order or notification.

4. Corix Utilities, Utilities, Inc., and Water Service Corporation shall adequately fund, construct, operate, and maintain Water Service Corporation's treatment, transmission, and distribution systems; comply with all applicable Kentucky statutes and administrative regulations; and supply the needs of Water Service Corporation's customers.

5. For 72 months from the date of the proposed transaction, Water Service Corporation shall provide a written report to the Commission if Water Service

Corporation is found in violation of any Federal or state water quality law by any court or administrative agency or is issued a Notice of Violation by the Kentucky Division of Water ("KDOW") for any alleged violation of any law or administrative regulation that KDOW administers or enforces.

6. Water Service Corporation shall maintain a meaningful process to monitor all allocations from corporate parents or affiliates to ensure the appropriateness of the allocations.

7. Water Service Corporation shall not file with the Commission any application for an adjustment of its rates earlier than six months from the date of this Order.

8. Pending completion of review of the proposed transaction by all applicable federal and state agencies, Water Service Corporation shall not prosecute or otherwise advance its claims in Franklin Circuit Court Civil Action No. 2011-CI-1770.²⁵

9. Upon successful completion of all required regulatory reviews of the proposed transaction, Water Service Corporation shall:

a. Dismiss its action for review in Franklin Circuit Court Civil Action No. 2011-CI-1770;

b. Not seek through its rates for water service recovery of any depreciation expense for Project Phoenix that has been, to date, excluded; and

c. Not seek through its rates for water service recovery of any litigation costs related to Franklin Circuit Court Civil Action No. 2011-CI-1770.

²⁵ *Water Service Corp. of Ky. v. Ky. Pub. Serv. Comm'n*, No. 2011-CI-1770 (Franklin Cir. Ct. filed Dec. 16, 2011).

10. Water Service Corporation's books and records shall be maintained and housed in Kentucky or in a manner to be easily accessible to the Commission for inspection at reasonable times upon reasonable notice.

11. Water Service Corporation shall not seek a higher rate of return on equity than would have been sought if the proposed transfer of control had not occurred.

12. Water Service Corporation shall make no change to its current method for accounting for deferred income taxes.

13. Neither Corix Utilities nor Utilities, Inc. shall allocate to or seek recovery from Water Service Corporation or its ratepayers any early termination costs, change-in-control payments, or retention bonuses paid to a Hydro Star or Utilities, Inc. employee as a result of the proposed transaction.

14. Water Service Corporation shall not record any portion of the payment for Hydro Star stock on its books.

15. Neither Corix Utilities nor Utilities, Inc. shall "push down" to Water Service Corporation any transaction-related costs or any premium that Corix Utilities may pay for Hydro Star stock.

16. Water Service Corporation shall not directly or indirectly, incur any additional costs, liabilities, or obligations in conjunction with Corix Utilities' acquisition of Hydro Star to the extent that this does not include obligations that would not otherwise be required by the Commission but for the conditions placed on the transfer.

17. Water Service Corporation shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the acquisition of Hydro Star.

18. Water Service Corporation shall not seek recovery from its ratepayers any transaction-related costs or any premium that Corix Utilities may pay for Hydro Star stock.

19. Representatives of Corix Utilities, Utilities, Inc., and Water Service Corporation shall meet at least once annually with the Commission's representatives at the Commission's offices in Frankfort, Kentucky.

20. To provide a forum for customers to communicate with utility management, Corix Utilities and Utilities, Inc. shall host annual public meetings in Clinton and Middlesboro, Kentucky, at which the senior officers from the regional office of Utilities, Inc. that oversees Water Service Corporation's operations will attend and participate.

21. For two years from the date of Corix Utilities' acquisition of Hydro Star's stock, Corix Utilities, Utilities, Inc., or Water Service Corporation shall notify the Commission in writing within 10 days of any changes in Utilities, Inc.'s or Water Service Corporation's corporate officers and management personnel.

22. Within 10 days of any public announcement of any acquisition by Corix Utilities that will affect the rates of or service provided by Water Service Corporation, Corix Utilities, Utilities, Inc., or Water Service Corporation shall advise the Commission of such acquisition.

23. Corix Utilities, Utilities, Inc., and Water Service Corporation shall minimize, to the extent possible, any negative effects on levels of customer service and customer satisfaction resulting from any future workforce reductions.

24. Water Service Corporation shall, for calendar year 2012 and for the next five years thereafter, include with its annual report to the Commission a table that shows each water quality standard imposed by law, the number of water service interruptions, the average employee response time to water service interruptions, the number of customer complaints, and the customer inquiry response time for that calendar year.

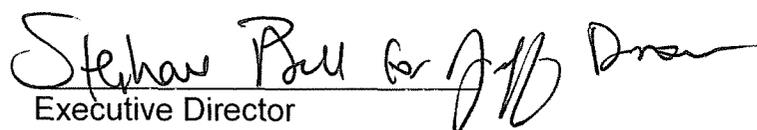
25. Water Service Corporation shall annually file with the Commission its current two-year capital and operation and maintenance budgets and an explanation for any reduction in a budgeted item.

26. Within 10 days of the completion of the proposed transaction, Corix Utilities, Utilities, Inc., and Water Service Corporation shall file a written notice setting forth the date of completion of the proposed transaction.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2012-00133 DATED **AUG 13 2012**

1. Corix Utilities (Illinois) LLC ("Corix Utilities") has no current intention to transfer control of Water Service Corporation following the consummation of the transaction and acknowledges that Commission approval would be required for any future transfer of control.

2. Corix Utilities, Utilities, Inc., and Water Service Corporation will adequately fund and maintain Water Service Corporation's treatment, transmission, and distribution systems.

3. For 72 months from the date of the proposed transaction, Water Service Corporation will provide a written report to the Commission if Water Service Corporation is found in violation of any Federal or state water quality law by any court or administrative agency or is issued a Notice of Violation by the Kentucky Division of Water ("KDOW") for any alleged violation of any law or administrative regulation that KDOW administers or enforces.

4. Water Service Corporation will have a meaningful process to monitor all allocations from corporate parents or affiliates to ensure the appropriateness of the allocations.

5. Water Service Corporation will not file with the Commission any application for an adjustment of its rates earlier than six months from the date of this Order.

6. Pending completion of review of the proposed transaction by all applicable federal and state agencies, Water Service Corporation will refrain from taking any action to prosecute its claims in Franklin Circuit Court Civil Action No. 2011-CI-1770.

7. Upon successful completion of all required regulatory reviews of the proposed transaction, Water Service Corporation will dismiss its action for review of the Commission's Order of November 23, 2011 in Case No. 2010-00476 and will not seek the recovery of the costs of litigation for Franklin Circuit Civil Action No. 2011-CI-1770 through rates.

8. Water Service Corporation's books and records will be maintained and housed in Kentucky or will otherwise be maintained in a manner to be easily accessible to the Commission for inspection at reasonable times upon reasonable notice.

9. Water Service Corporation will not seek a higher rate of return on equity than would have been sought if the proposed transfer of control had not occurred.

10. The accounting and ratemaking treatments of Water Service Corporation's excess deferred income taxes will not be affected by the proposed transaction.

11. No early termination costs, change in control payments, or retention bonuses paid to a Hydro Star, LLC or Utilities, Inc. employee as a result of the proposed transaction will be allocated to Water Service Corporation or recovered from Water Service Corporation's ratepayers.

12. Neither Water Service Corporation nor its ratepayers, directly or indirectly, will incur any additional costs, liabilities, or obligations in conjunction with Corix Utilities' acquisition of Hydro Star, LLC to the extent that this does not include obligations that

would not otherwise be required by the Commission but for the conditions placed on the transfer.

13. Water Service Corporation will not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the acquisition of Hydro Star, LLC.

14. Any premium that Corix Utilities pays for Hydro Star, LLC stock, as well as all transaction-related costs, will not be “pushed down” to Water Service Corporation and will not be recovered from Water Service Corporation’s ratepayers to the extent that this does not include obligations that would not otherwise be required by the Commission but for the conditions placed on the transfer.

15. Corix Utilities and Utilities, Inc. will take an active and ongoing role in managing and operating Water Service Corporation in the interests of customers, employees, and the Commonwealth of Kentucky, and will take the lead in enhancing Water Service Corporation’s relationship with the Commission, with state and local governments, and with other community interests, and to advance these goals shall, among other things, arrange for meetings between Corix Utilities’ and Utilities, Inc.’s senior management and the Commission and/or its Staff, at least annually.

16. Corix Utilities and Utilities, Inc. will host annual public meetings in Clinton and Middlesboro to provide a forum for customers to communicate with utility management.

17. For at least two years from the date of Corix Utilities’ acquisition of Hydro Star LLC’s stock, Corix Utilities, Utilities, Inc., or Water Service Corporation will notify

the Commission in writing within 10 days of any changes in Utilities, Inc.'s or Water Service Corporation's corporate officers and management personnel.

18. Corix Utilities, Utilities, Inc., or Water Service Corporation will advise the Commission following any public announcement of any acquisition by Corix Utilities that will affect the rates of or service provided by Water Service Corporation.

19. Corix Utilities, Utilities, Inc., and Water Service Corporation will comply with all applicable Kentucky statutes and administrative regulations; and supply the service needs of Water Service Corporation's customers.

20. Corix Utilities, Utilities, Inc., and Water Service Corporation will minimize, to the extent possible, any negative effects on levels of customer service and customer satisfaction resulting from workforce reductions.

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